

Date: March 22, 2001

DSL-BQA-01-015

To: Community Mental Health and AODA Programs

CMHA 07

From: Otis L. Woods, Chief
Health Services Section
Bureau of Quality Assurance

cc: Susan Schroeder, Director
Bureau of Quality Assurance

Certification of Waivers and Variances Submitted to the Program Certification Unit

With the promulgation and implementation of Chapter HFS 75, Wisconsin Administrative Code, relating to the provision of community substance abuse services, the issue of waivers and variances has come to the forefront. The purpose of this memorandum is to provide clarification concerning the requests for waivers and variances submitted to the Bureau of Quality Assurance.

Periodically, certified programs request exceptions to meeting program standards. A *waiver*, if granted, allows the provider to not meet the requested regulation. A “*variance*” indicates that the certified program will meet the regulation in a manner different than what the regulation requires. For example, the most common request is a waiver of Chapter HFS 61.97(5), WI Administrative Code, for physician referrals to certified outpatient mental health programs. To meet this requirement, certified entities request using the services of a licensed clinical psychologist in place of a physician. This is actually a variance permitting them to meet the rule in a different manner.

The following provisions of the Wisconsin Administrative Code permit exceptions (waivers and variances) to the mental health and substance abuse standards that are enforced by Program Certification Unit staff:

Code	Description
HFS 34.04	Emergency Mental Health Service Program
HFS 40.05	Mental Health Day Treatment Services for Children
HFS 61.20(3)	Community Mental Health, Developmental Disabilities, and Alcohol and Other Drug Abuse Services
HFS 63.05	Community Support Programs for Chronically Mentally Ill Persons
HFS 75	No specific waiver or variance language. The allowance for an exception is covered under HFS 61.20(3).
HFS 92	Confidentiality of Treatment Records. No waivers or variances of these standards are permitted.
HFS 94	Patient Rights and Resolution of Patient Grievances. No waiver or

	variances of these standards are permitted.
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Elements of a variance/waiver request

The Department may grant an exception to program requirements, except Chapter HFS 92 or Chapter HFS 94, when the Department determines that the granting of the exception would not diminish the effectiveness of the services provided by the program or does not adversely affect the health and safety of the patients served by the program. The following elements must be addressed in each exception requested by certified entities:

1. The code under which an exception is requested;
2. Justification for the request;
3. Expected duration of the request, not to extend beyond the program's certification period;
4. If a variance, how the program will meet the regulation under which the exception is requested; and,
5. General statement concerning the impact of the exception on the delivery of services.

The Department has up to 60 calendar days to approve or deny the request for exception under Chapter HFS 61 and HFS 75. Although a timeframe for a response is not specified in HFS 34, HFS 40, or HFS 63, the Department will use the HFS 61 guidelines as a timeframe to respond to individual requests. Further, the Department may impose conditions on granting the exception. If the Department fails to act on the request within 60 calendar days, the exception shall be automatically approved for the period not to extend beyond the current certification period of the program. Again, the Department will not consider requests for a variance or waiver of HFS 92 or HFS 94.

Please submit all requests for exceptions to:

Mark Hale, Supervisor
Program Certification Unit
P.O. Box 2969
Madison, WI 53701-2969